

ORIGINAL

In the United States Court of Federal Claims

Bid Protest

15-1033 C

OCTO CONSULTING GROUP, INC.
1600 International Drive
Suite 500
McLean, Virginia 22102

Plaintiff,

v.

THE UNITED STATES,

Defendant.

FILED
SEP 17 2015
U.S. COURT OF
FEDERAL CLAIMS

No. 15- C

Judge

POST-AWARD PROCUREMENT PROTEST COMPLAINT

Plaintiff, Octo Consulting Group, Incorporated, 1600 International Drive, Suite 500, McLean, Virginia 22102 (Octo Consulting), a Virginia Corporation and a qualifying Small Business concern which holds Contract Number GS-35F-0243W, one of

the many General Services Administration Information Technology Schedule 70 Multiple-Award Schedule Contracts (<http://www.octoconsulting.com/>, last visited September 10th, 2015), as and for its Post-Award Procurement Protest Complaint against the Defendant, the United States, alleges as follows:

INTRODUCTION

1. This is a Post-Award Procurement Protest, a Civil Action alleging clear and prejudicial violations of Federal Acquisition Regulation (FAR) 8.405-3(b)(2)(vi), a procurement Regulation, and clear and prejudicial violations of 5 U.S.C. § 706(2) and 28 U.S.C. § 1491(b)(4) by Agency actions irrationally based, arbitrary, or capricious, all of these in connection with a Federal Agency Procurement, the United States General Services Administration's (GSA's) Federal Acquisition Service, Integrated Technology Service, National IT Commodity Program's (the Agency's), Request for Quotations (RFQ) Number 4QTFHS15004, For the Establishment of Multiple Award

Blanket Purchase Agreements (BPAs) for Agile Delivery Services (ADS I). RFQ Number 4QTFHS150004 was under FAR Subpart 8.4—Federal Supply Schedules conducted as a Competition among holders of the many GSA Information Technology Schedule 70 Multiple-Award Schedule Contracts, and two segments of this Competition (Pool One and Pool Two) were further limited to those Multiple-Award Schedule Contractors who were Small Business Contractors with three-year averaged annual revenues below a designated Size Standard. RFQ Number 4QTFHS15004 was under FAR 8.405-3(a)(3)(i) solicited to establish Multiple-Award BPAs. Sixteen Multiple-Award BPAs have been issued for the unrestricted segment of this Competition (Pool Three – Full Stack – Design and Development). This is a challenged Federal Agency Procurement, 41 U.S.C. § 152(3), over which this Court has jurisdiction under 28 U.S.C. § 1491(b)(1).

2. This Civil Action is brought to obtain a Declaration that the Agency's Multiple-Awards were irrationally based, arbitrary, or capricious; that the Agency's Multiple-Awards were not "made in accordance with the basis for selection in the RFQ" and in violation of FAR 8.405-3(b)(2)(vi); and that the Agency failed to conduct the Competition to "enable the Government to assess the price of performance as between competing quotes," else there was no Price assessment by the Agency Contracting Officer or the Price assessment conducted by the Agency Contracting Officer was irrational, arbitrary, or capricious. Attachment 1, RFQ Number 4QTFHS150004, **24.0 EVALUATION AND BASIS FOR AWARD, B. PRICE:**, page 19 of 19.

NATURE OF THE ACTION

3. Octo Consulting seeks a proper review of this challenged Federal Agency Procurement on the contemporaneous Administrative Record, 5 U.S.C. § 706(2)(A), and

Octo Consulting seeks meaningful relief for clear and prejudicial procurement process errors and for clear errors of judgment.

4. Octo Consulting is an actual Offeror for the unrestricted segment of this Competition and an appropriate “interested party” under 28 U.S.C. § 1491(b)(1). Octo Consulting, as an actual Offeror, has a direct economic interest in the outcome of, and standing to pursue, this Post-Award Procurement Protest.

5. This Post-Award Procurement Protest is timely filed. Octo Consulting received a brief explanation of the Agency action here challenged on Wednesday, September 2nd, 2015. This brief explanation was accompanied by a spreadsheet listing Awardees and their quoted Prices. RFQ Number 4QTFHS150004 required that Offerors submit to a publicly-accessible version control repository both a working design software prototype and their Technical Proposals. Octo Consulting analyzed these materials earlier submitted by the Awardees. On Friday, September 4th, 2015,

Octo Consulting notified the Agency Contracting Officer that four of the sixteen Awardees had not complied with instructions and requirements announced in RFQ Number 4QTFHS150004, noncompliances demanding, under the Agency's own terms, these Quotations "be deemed failing to assent to material terms of the solicitation and . . . eliminated from consideration." On Wednesday, September 9th, 2015 the Agency Contracting Officer notified Octo Consulting he declined to take corrective action. Octo Consulting submitted the Prefiling Notification required by RCFC Appendix C on Tuesday, September 15th, 2015.

6. Defendant's GSA is an Independent Establishment of the United States, 5 U.S.C. § 104; and GSA's Federal Acquisition Service, Integrated Technology Service, National IT Commodity Program, is an instrumentality of the United States. Defendant's GSA is authorized under 40 U.S.C. § 501(b) to procure and supply personal property and non-personal support services. Defendant's GSA is an "Agency" just as

this term is defined in 28 U.S.C. § 451, and Defendant's GSA is also a "Federal agency" as required by 28 U.S.C. § 1491(b)(1).

7. Octo Consulting is a proper party for purposes of the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(2)(B)(ii), i.e., Octo Consulting is a private party and a Corporation which when this Post-Award Procurement Protest is filed has not over 500 employees and whose net worth does not exceed \$7,000,000 averaged over the past three years.

FACTUAL ALLEGATIONS

8. RFQ Number 4QTFHS150004 was conducted under the authority of FAR 8.405-3, "Blanket Purchase Agreements (BPAs)." RFQ Number 4QTFHS150004 was solicited to establish Multiple-Award BPAs. FAR 8.405-3(a)(3)(i). RFQ Number 4QTFHS150004 was for support services requiring a Statement of Work. FAR 8.405-3(b)(2). FAR 8.405-3(b)(2)(iii) required that the Agency must provide Evalu-

ation Criteria to Multiple-Award Schedule Contractors from whom support services were solicited. FAR 8.405-3(b)(2)(vi) required that the Agency “shall ensure all quotes received are fairly considered and *award is made in accordance with the basis for selection in the RFQ.*” (Emphasis added).

9. RFQ Number 4QTFHS150004 was solicited to establish “a government-wide contract vehicle through which agencies can have access to a pool of vendors with agile delivery capabilities such as user-centered design, agile software development, and Development and Operations (DevOps).” Attachment 1, RFQ Number 4QTFHS150004, **2.0 BACKGROUND**, pages 7 through 8 of 19. “Agile software development” refers to lightweight software development methods which focus on individuals and interactions rather than process and tools, working software rather than comprehensive documentation, customer collaboration rather than negotiation of terms and conditions, and responding to change rather than following a plan.

“Agile software development,” Wikipedia, The Free Encyclopedia, https://en.wikipedia.org/wiki/Agile_software_development, last visited September 11th, 2015. The estimated, but not guaranteed, volume of Task Orders to be placed under this pool of Multiple-Award BPAs is set at \$25,000,000. Attachment 1, RFQ Number 4QTF-HS150004, **8.0 VOLUME OF PURCHASES**, page 10 of 19.

10. These were Evaluation Criteria:

1.2 Quote Submission: Quotes will only be accepted via GSA eBuy in accordance with the instructions set forth in this RFQ. *Quotes submitted must comply with all instructions and requirements set forth in the RFQ.* Quoters shall complete the Agile Delivery Services RFQ Compliance Review Checklist Google form in its entirety before the RFQ Closing Date. *Compliance Review will be a pass/fail factor and a quote failing to complete the Google form in its entirety or comply with the RFQ will be deemed failing to assent to material terms of the solicitation and will be eliminated from consideration.* The quoter shall submit the following documents:

.....

C. Technical Approach: *Quoters shall conform to the requirements outlined in Section 24 A Non-Price Factors, Factor 1: Technical Approach (The proposed offer which includes the prototypes shall be preserved without modification at least 30 calendar days after award).*

1.3 Compliance Review

1.3.1 The quoter shall complete the following fields on the Agile Delivery Services RFQ Compliance Review Checklist Google form submitted.

....

M. Pool Three Full Stack (comprised of design and development) Submitted a working design and development prototype using datasets from <https://open.fda.gov> and used Application Programming Interface (API) to a publicly-accessible version control repository (e.g. GitHub, BitBucket) that supports git. (Note: Posting a repository in a different version control system will not be accepted)

N. Pool Three Full Stack (comprised of design and development) Provide a URL [Uniform Resource Locator] to the working design and development prototype

....

Q. Submitted Attachment E Approach Criteria Evidence

....

1.4 As part of the technical approach submission the quoters shall comply with the following for all pools:

....

D. The quoter shall completely fill out Attachment E (spreadsheet), Approach Criteria Evidence, included in the RFQ for each pool (e.g., Pool One – Design) that it is quoting on, respectively thereby providing evidence that the pool-specific criteria have been completely met.

....

Attachment 1, RFQ Number 4QTFHS150004, **1.0 INSTRUCTIONS TO QUOTERS**, pages 4 through 6 of 19. (Emphasis added).

For ADS I BPAs Pool Three Full Stack (Design and Development), the best value basis for awards will be determined by two evaluation factors, Technical Approach and Price, with Technical Approach being significantly more important than Price. GSA intends to award approximately 10 BPAs for Pool Three full stack to the quoters whose price is reasonable and achieve the highest rating for Pool Three Full Stack in regards to Factor 1, Technical Approach rating. There are three ratings associated with Tech-

nical Approach rating – Exceptional, Acceptable and Non Acceptable. If the highest Technical Approach rating (i.e. Exceptional) does not result in approximately 10 awards, then additional awards will be made at the next Technical Approach rating of “Acceptable”. Factor 2, Price will be used as the deciding factor with companies that receive the same Technical Approach rating.

The Government intends to evaluate quotes and issue multiple BPAs based on initial quotes. Quotes should contain the vendor’s best terms in the initial quote. The Government may, at its discretion, confer with a Quoter to clarify quote details. The Government also reserves the right not to issue a BPA.

A. NON-PRICE FACTORS:

Factor 1: Technical Approach: Quoters are required to submit a working prototype for each Pool it’s submitting a quote for Pool One Design, Pool Two Development, and/or Pool Three Full Stack which consists of both design and development, using the openFDA (<https://open.fda.gov>) dataset and Application Programming Interface (API) which demonstrates its agile delivery capabilities. The quoter’s proposed mix of labor categories and level of effort for its working prototype, as reflected in Attachment C, shall be evaluated to assess the quoter’s understanding and capability to supply Agile Delivery Services. The submission of the working prototype serves as a sample task that GSA believes is representative of the type of task orders

that may be issued against the BPAs. Demonstration of their agile capabilities shall consist of the following:

.....

Pool Three Full Stack:

Description: Write a brief description, no greater than 1500 words, of the approach used to create the working prototype and place this description in the README.md file located in the root directory of your repository.

Pool Three: the Full Stack Pool: In addition to the Description, above, the quoter must demonstrate that they followed the [U.S. Digital Services Playbook \[https://playbook.cio.gov/, last visited September 11th, 2015\]](https://playbook.cio.gov/) by providing evidence in the repository. The README.md file should also make reference to the following for Pool Three Full Stack:

- a. assigned one leader and gave that person authority and responsibility and held that person accountable for the quality of the prototype submitted.
- b. assembled a multidisciplinary and collaborative team that includes at a minimum five of the labor categories limited to the Design Pool, Development Pool categories to the full stack (i.e., Design and Development) as quoted in Attachment C. The quoter's proposed mix of labor categories and level of effort for its working pro-

prototype, as reflected in Attachment C, shall be evaluated to assess the quoter's understanding and capability to supply agile delivery services.

c. Understand what people need, by including people in the prototype development and design process

d. Used at least three "human-centered design" techniques or tools

e. Created or used a design style guide and/or a pattern library

f. Performed usability tests with people

g. used an iterative approach, where feedback informed subsequent work or versions of the prototype

h. created a prototype that works on multiple devices, and presents a responsive design

i. used at least five modern and open-source technologies, regardless of architectural layer (frontend, backend, etc)

j. deployed the prototype on an Infrastructure as a Service (IaaS) or Platform as Service (PaaS) provider, and indicated which provider they used.

k. wrote unit tests for their code

l. setup or used a continuous integration system to automate the running of tests and continuously deployed their code to their IaaS or PaaS provider.

m. setup or used configuration management

n. setup or used continuous monitoring

- o. deploy their software in a container (i.e., utilized operating-system-level virtualization)
- p. provided sufficient documentation to install and run their prototype on another machine
- q. prototype and underlying platforms used to create and run the prototype are openly licensed and free of charge

B. PRICE:

Factor 2- Price is significantly less important than Technical Approach and will be used as a deciding factor with companies that receive the same Technical Approach rating as previously discussed in Section 24. In determining price reasonableness, the Government will verify that the discounted rates quoted by the offeror for all quoted categories in Attachment B are equal to or less than the offeror's Schedule 70 contract rates. The quoter's proposed rates, mix of labor categories and level of effort for its working prototype, as reflected in Attachment C shall enable the Government to assess the price of performance as between competing quotes. Quoters must submit a separate Attachment C for each pool it's submitting a quote for. Price evaluation for BPA best value selection purposes will be based on the offeror's total discounted price for the development of the working prototype as quoted in Attachment C. . . .

Attachment 1, RFQ Number 4QTFHS150004, **24.0 EVALUATION AND BASIS FOR AWARD**, page 15 through 19 of 19. (Emphasis added).

11. The Agency Contracting Officer has explained that sixteen Quotations were selected for Multiple-Award BPAs, that all these Quotations received “Exceptional,” the highest Technical Approach rating, and that all these Quotations were determined compliant with all instructions and requirements in the RFQ. Consonant with the terms of RFQ Number 4QTFHS150004, Factor 2, Price, was the deciding Factor. Prices received for the Quotations from these sixteen Offerors ranged from \$16,536.81 through \$49,616.18. Nine Offerors submitted Prices in excess of \$30,000. Six of the remaining Offerors submitted Prices over \$20,000. Only one Offeror submitted a Price below \$20,000. Left unexplained is just how the Agency Contracting Officer was with these widely-ranging Prices able “to assess the price of performance as between competing quotes.” The Agency Contracting Officer

confirms that Octo Consulting's Quotation complied with the instructions and requirements set out in the RFQ, and that Octo Consulting's Technical Proposal likewise received "Exceptional," the highest Technical Approach rating. Attachment 2, Electronic Message, "Brief Explanation of Award Decision Agile Delivery Services (ADS I) Blanket Purchase Agreement (BPA) Pool Three Full Stack – RFQ 4QTFHS150004," Wednesday, September 2nd, 2015.

12. Price competition under RFQ Number 4QTFHS150004 was premised on offered discounts from pricing published for each Offeror's GSA Information Technology Schedule 70 Multiple-Award Contract. FAR 8.401, "Definitions," explains that support services offered for delivery under the GSA Information Technology Schedule 70 Multiple-Award Contracts are "similar or comparable." FAR 38.101, "General," describes the GSA Information Technology Schedule 70 Multiple-Award Contracts as offering "commercial supplies and services in varying quanti-

ties while obtaining volume discounts.” There is not a wide variance in commercial Prices on offer for comparable support services, even with discounts from these published commercial Prices. These widely-ranging Prices starting at \$16,536.81 and running through \$49,616.18 were for the same thing, design and development of working software prototypes from the same dataset, and they could not have provided a basis for the Agency Contracting Officer “to assess the price of performance as between competing quotes.” Either there was no Price assessment else the Price assessment conducted was irrational, arbitrary, or capricious.

13. Initially, Offerors were given until noon, June 26th, 2015 to submit to a publicly-accessible version control repository their Technical Proposals and a working design and development software prototype. This closing date was then extended until 8:00 p.m. on July 1st, 2015, and then it was extended again until 1:00 p.m. on July 7th, 2015. The Agency Contracting Officer issued no guidance about continu-

ing design and development work on the software prototype—the practice is that additional time is used to address backlog/add features, but it is also likely, given the range of Prices, that some Offerors stopped development efforts based on the original due date. The Offerors lacked direction from the Agency Contracting Officer, direction which would have enabled the Competition to proceed on a common basis. Lacking such direction, the Agency failed to conduct the Competition to “enable the Government to assess the price of performance as between competing quotes.”

14. After receiving from the Agency Contracting Officer his brief explanation of the Agency action here challenged, Octo Consulting analyzed the Technical Proposals (the README.md files) submitted by Offerors whose Quotations had been accepted. Save for one of the Awardees, these Technical Proposals remained, as required by RFQ Number 4QTFHS150004, publicly accessible over the Internet.

These Technical Proposals were limited to 1,500 words. But the Technical Proposals submitted by three Awardees exceeded the word count, and a fourth Awardee had removed its Technical Proposal from its publicly-accessible repository. RFQ Number 4QTFHS150004 provided that “a quote failing to . . . comply with the RFQ will be deemed failing to assent to material terms of the solicitation and will be eliminated from consideration.” Octo Consulting asked the Agency Contracting Officer to be included among the other Awardees. Attachment 3, Electronic Message, Naina Leo, Octo Consulting to Hassan Harris, Agency Contracting Officer, Friday, September 4th, 2015.

15. Subsection 1.2 of section **1.0 INSTRUCTIONS TO QUOTERS** sets out three items in each Quotation which “must comply with all instructions and requirements set forth in the RFQ.” These are: (1) the Agile Delivery Services RFQ Compliance Review Checklist Google form, (2) the results of a pass/fail “Compli-

ance Review” set out in Attachment E and elsewhere, and (3) all other instructions and requirements. Compliance with the Agile Delivery Services RFQ Compliance Review Checklist Google form is not an issue here. RFQ Number 4QTFHS150004 set out the basis for selection when it provided that a noncompliant Quotation “will be deemed failing to assent to material terms of the solicitation and will be eliminated from consideration.” RFQ Number 4QTFHS150004 required that Offerors submit to a publicly-accessible version control repository both a working software prototype and their Technical Proposals. These precepts embodied the concept of “responsiveness” found in sealed Bid Solicitations. FAR 14.101(e), “Elements of sealed bidding,” provides that “[a]fter bids are publicly opened, an award will be made with reasonable promptness to that responsible bidder whose bid, conforming to the invitation for bids, will be most advantageous” (Emphasis added). FAR 14.103-2(d), “Limitations,” provides that “[a]n award is made to the responsi-

ble bidder (see 9.1) whose *bid is responsive to the terms of the invitation for bids* . . .” (Emphasis added).

16. Otherwise, this Competition was unlike a sealed Bid Solicitation: there was no public opening of Quotations and Prices were not revealed. The Agency provided no listing of Offerors and no listing of locations (Internet addresses, URLs) for the publicly-accessible version control repositories. Prices quoted by Offerors who received one of the Multiple-Award BPAs were revealed only with the brief explanation of Agency action provided to Octo Consulting on Wednesday, September 2nd, 2015.

17. The Agency Contracting Officer responded on Wednesday, September 9th, 2015 to Octo Consulting’s challenge of Friday, September 4th, 2015. He declined to take corrective action. Ignoring the basis for selection announced in subsection 1.2

of section **1.0 INSTRUCTIONS TO QUOTERS**, the Agency Contracting Officer wrote:

One concern you raise regards pass/fail compliance with some offerors you believe allegedly exceeding the 1,500 word count with regard to their README.md file submission. The Agile Delivery Services Request for Quote (RFQ) did not include the 1,500 word count requirement as part of the compliance review pass/fail criteria as noted in section 1.3.1 of the RFQ. The 1,500 word count requirement was included in the technical evaluation as noted in RFQ section 24.0.A. Non-Price Factors. This is reinforced by the Request for Quote section 24.0.A. which stated “In addition to the description [in the README file], above, the quoter must demonstrate that they followed the U.S. Digital Services Playbook by providing evidence in the repository. The README.md file should also make reference to the following for Pool Three Full Stack: a. met all the evidence criteria listed above in the Design Pool and Development Pool [...]”.

Included in the 18 total criteria that the Government evaluated for the Technical Approach factor with respect to each Pool 3 quote was the specific criterion that included with the word count. *A submission that exceeded the 1,500 word count would be evaluated as failing to meet that particular criterion, but it would not constitute a basis for removing the quote from further consideration.* Accordingly, if an offeror hypothetically exceeded the 1,500 word limit, then the Government would not necessarily eliminate

this offeror from consideration; however, failing to meet that criterion has the potential to affect the offeror's overall rating which is based on all 18 criteria.

Attachment 4, Electronic Message, Hassan Harris, Agency Contracting Officer to Naina Leo, Octo Consulting, Wednesday, September 9th, 2015 (Emphasis added).

18.RFQ Number 4QTFHS150004 defined the elements of the pass/fail "Compliance Review" in two places: (1) the nineteen pass/fail elements set out in the spreadsheet presented as Attachment E, "Approach Criteria Evidence Template," and (2) the pass/fail content requirements for Technical Proposals for Pool Three Full Stack Quotations set out in the seventeen items listed in lower-case alphabetic sequence in section **24.0 EVALUATION AND BASIS FOR AWARD**. The Agency Contracting Officer's electronic message of Wednesday, September 9th, 2015 referred to "the 18 total criteria that the Government evaluated for the Technical Ap-

proach factor with respect to each Pool 3 quote” These eighteen total criteria were, as he said, the word count limitation for the Technical Proposals and, obviously, the pass/fail content requirements for Technical Proposals for Pool Three Full Stack Quotations set out in the seventeen items listed in lower-case alphabetic sequence in section **24.0 EVALUATION AND BASIS FOR AWARD**.

19. Octo Consulting has now reviewed the content of the Technical Proposals submitted by fifteen Offerors whose Quotations have been accepted—one Offeror whose Quotation has been accepted has already removed its Technical Proposal from its publicly-accessible repository. This review addresses compliance *vel non* of these Technical Proposals with pass/fail content requirements for (1) the nineteen pass/fail elements set out in the spreadsheet presented as Attachment E, “Approach Criteria Evidence Template,” and (2) the pass/fail content requirements for Technical Proposals for Pool Three Full Stack Quotations set out in the seventeen

items listed in lower-case alphabetic sequence in section **24.0 EVALUATION AND BASIS FOR AWARD**. Several Technical Proposals are non-compliant with these pass/fail content requirements as tabulated in Attachment 5. Under the terms of RFQ Number 4QTFHS150004, these Quotations must have been deemed non-responsive; the Multiple-Awards made on these Quotations were not “made in accordance with the basis for selection in the RFQ” and in violation of FAR 8.405-3(b)(2)(vi).

FIRST CLAIM FOR RELIEF

20. Octo Consulting incorporates and re-alleges paragraphs numbers 1. through 19. hereinabove as if fully set forth herein.

21. The Agency’s Multiple-Awards accepting sixteen of the Quotations which have been submitted lack a rational basis and are not reasonable nor do they reflect due consideration of all relevant factors, this as required by 5 U.S.C. § 706(2)(A) and 28

U.S.C. § 1491(b)(4). Prices ranging from \$16,536.81 through \$49,616.18 for design and development of working software prototypes from the same dataset could not have provided a basis for the Agency Contracting Officer “to assess the price of performance as between competing quotes.” The Agency failed to conduct the Competition to “enable the Government to assess the price of performance as between competing quotes,” else there was no Price assessment by the Agency Contracting Officer or the Price assessment conducted by the Agency Contracting Officer was irrational, arbitrary, or capricious.

SECOND CLAIM FOR RELIEF

22. Octo Consulting incorporates and re-alleges paragraphs numbers 1. through 19. hereinabove as if fully set forth herein.

23. The Technical Proposals submitted by three Awardees exceeded the mandatory word count limitation and a fourth Awardee has, in violation of an instruction and

requirement set out in RFQ Number 4QTFHS150004, already removed its Technical Proposal from its publicly-accessible repository. Other Technical Proposals are non-compliant with one of more of the pass/fail content requirements for Quotations on the Agency's Pool Three Full Stack requirement. These Technical Proposals cannot reasonably have received "Exceptional," the highest Technical Approach rating; these Quotations are non-responsive to the instructions and requirements set out in RFQ Number 4QTFHS150004 and, under the Agency's terms, must have been "deemed failing to assent to material terms of the solicitation and . . . eliminated from consideration."

PRAYER FOR RELIEF

WHEREFORE, premises considered, Octo Consulting respectfully requests the Court to grant Judgment for Octo Consulting in this Civil Action, and to Order the following relief:

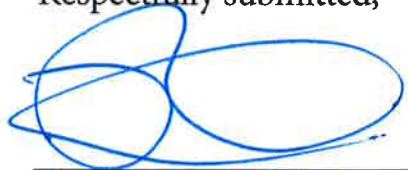
1. a Declaration that (a) the Agency's Multiple-Award decisions cannot reasonably have been premised, as they were, on uniform "Exceptional" Technical Approach ratings and that (b) the Agency failed to conduct the Competition to "enable the Government to assess the price of performance as between competing quotes," else there was no Price assessment by the Agency Contracting Officer or the Price assessment conducted by the Agency Contracting Officer, both of which were irrational, arbitrary, or capricious; and

2. a Declaration (a) that the Technical Proposals submitted by three Awardees exceeded the mandatory word count limitation and a fourth Awardee has, in violation of an instruction and requirement set out in RFQ Number 4QTFHS150004, already removed its Technical Proposal from its publicly-accessible repository, and (b) that other Technical Proposals are non-compliant with one of more of the pass/fail content requirements for Quotations on the Agency's Pool Three Full Stack require-

ment—the Agency acted wrongly, in violation of FAR 8.405-3(b)(2)(vi), because the Agency’s Multiple-Awards were not “made in accordance with the basis for selection in the RFQ”; and

3. a Permanent Injunction compelling Defendant’s GSA to terminate the Multiple-Awards made under RFQ Number 4QTFHS150004; and
4. such further and other relief as the Court may deem just and proper.

Respectfully submitted,



Cyrus E. Phillips IV
Virginia State Bar Number 03135

September 17th, 2015

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Attorney of record for Plaintiff,
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ATTACHMENT 1



U.S. General Services Administration

Request for Quotation (RFQ)
4QTFHS150004 – Modification #5

For the Establishment
of
Multiple Award Blanket Purchase Agreements (BPAs)
for
Agile Delivery Services (ADS I)

Solicited to:

GSA Multiple Award Schedule (MAS)
Federal Supply Schedule 70 Contract Holders
SIN 132-51

Issued by:

The General Services Administration (GSA)
Federal Acquisition Service, Integrated Technology Service
National IT Commodity Program
401 West Peachtree Street NW, Suite 820
Atlanta, GA 30308

Special Notice: Pool One and Pool Two will be 100% set-aside for Small Business Pool Three will be full and open competition.

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1.0 INSTRUCTIONS TO QUOTERS

1.1 Request for Quote: This is a Request for Quotation (RFQ), under Federal Acquisition Regulation (FAR) 8.405-3 ordering procedures, to establish multiple award Blanket Purchase Agreements (BPAs).

The General Services Administration intends to establish BPAs against the GSA Federal Supply Schedule 70, SIN 132-51 IT Professional Services under NAICS Code 541512. These BPAs will be administered by the National Information Technology Commodity Program (NITCP) and IT Schedule 70. The BPAs will be broken down into three (3) distinct multiple award pools.

- A. **Pool One - Design Pool - Total Set-aside for SB Concerns:** GSA intends to establish approximately 5 BPAs in support of Pool One. The total set of labor categories which quoters must carry to be considered for an award under this pool are:

Category 1 - Product Manager	Category 3 - Interaction Designer/User Researcher/Usability Tester
Category 4 - Writer/Content Designer/Content Strategist	Category 5- Visual Designer
Category 6 - Front End Web Designer	

- B. **Pool Two - Development Pool - Total Set aside for SB Concerns:** GSA intends to establish approximately 5 BPAs in support of Pool Two. The total set of labor categories which quoters must carry to be considered for an award under this pool are:

Category 2 - Technical Architect	Category 6 - Front End Web Developer
Category 7 - Backend Web Developer	Category 8 - DevOps Engineer

- C. **Pool Three - Full Stack Pool - Unrestricted:** GSA intends to establish approximately 10 BPAs for Pool Three. The total set of labor categories which quoters must carry to be considered for an award under this pool are:

Category 1 - Product Manager	Category 2 - Technical Architect
Category 3 - Interaction Designer/User Researcher/Usability Tester	Category 4 - Writer/Content Designer/Content Strategist

Category 5 - Visual Designer	Category 6 - Frontend Web Developer
Category 7 - Backend Web Developer	Category 8 - DevOps Engineer
Category 9 - Security Engineer	Category 10 - Delivery Manager
Category 11 - Agile Coach	Category 12 - Business Analyst
Category 13 - Digital Performance Analyst	

The approximate number of BPAs is an approximation and GSA reserves the right in its sole discretion to establish a fewer or greater number of BPAs.

1.2 Quote Submission: Quotes will only be accepted via GSA eBuy in accordance with the instructions set forth in this RFQ. Quotes submitted must comply with all instructions and requirements set forth in the RFQ. Quoters shall complete the Agile Delivery Services RFQ Compliance Review Checklist Google form in its entirety before the RFQ Closing Date. Compliance Review will be a pass/fail factor and a quote failing to complete the Google form in its entirety or comply with the RFQ will be deemed failing to assent to material terms of the solicitation and will be eliminated from consideration. The quoter shall submit the following documents:

- A. Complete Agile Delivery Services RFQ Compliance Review Checklist Google form – https://docs.google.com/forms/d/10gQ0TzzjZD68y-rg5jmAmLTslVoeeu9tCr9lidOgBz0/viewform?usp=send_form
- B. Labor Category Discount and Mapping - Quoter shall complete Attachment B, Labor Category Mapping and Discount, Tab One for Pool One Design, Attachment B Tab Two for Pool Two Development, Attachment B Tab Three for Pool Three Full Stack. As per RFQ Section 1.0 A, B, and C, Instructions to Quoters, for each pool quoted on quoters are required to quote and carry each and every labor category and shall submit category pricing and discounts as provided for in Attachment B, respectively. Quoters shall map its quoted labor categories from its existing GSA Schedule 70 contract to the BPA labor categories in Attachment B. Discounted rates quoted in Attachment B shall apply to all task orders under the BPA and shall remain fixed for the duration of the BPA unless otherwise negotiated by the Contracting Officer. Attachment B shall be submitted in eBuy.
- C. Technical Approach: Quoters shall conform to the requirements outlined in Section 24 A Non-Price Factors, Factor 1: Technical Approach (The proposed offer which includes the prototypes shall be preserved without modification at least 30 calendar days after award).

- D. Price –Quoter shall complete Attachment C Tab One for Pool One Design, Attachment C Tab Two for Pool Two Development, Attachment C Tab Three for Pool Three Full Stack. Please see Section 24 B Price, Factor 2 for instructions. Attachment C shall be submitted in eBuy.

1.3 Compliance Review

1.3.1 The quoter shall complete the following fields on the Agile Delivery Services RFQ Compliance Review Checklist Google form submitted.

- A. Contractor Name
- B. GSA Schedule Contract Number
- C. Point of Contact Name, Email and Phone Number
- D. Select your size standard under NAICS 541512
- E. Submitting Quote for Pool One Design (Set aside for Small Business)
- F. Submitting Quote for Pool Two Development (Set aside for Small Business)
- G. Submitting a Quote for Pool Three Full Stack (Unrestricted)
- H. Small Business Socio economic Status 294 and 295 is no longer required. Please enter N/A on Agile Delivery Services RFQ Compliance Review Checklist Google form.
- I. Pool One Design - Submitted a working design prototype using datasets from <https://open.fda.gov> and used Application Programming Interface (API) to a publicly-accessible version control repository (e.g. GitHub, BitBucket) that supports git. (Note: Posting a repository in a different version control system will not be accepted)
- J. Pool One Design - Provide URL to the working design prototype
- K. Pool Two Development - Submitted a working development prototype using datasets from <https://open.fda.gov> and used Application Programming Interface (API) to a publicly-accessible version control repository (e.g. GitHub, BitBucket) that supports git. (Note: Posting a repository in a different version control system will not be accepted)
- L. Pool Two Development - Provide a URL to the working development prototype
- M. Pool Three Full Stack (comprised of design and development) Submitted a working design and development prototype using datasets from <https://open.fda.gov> and used Application Programming Interface (API) to a publicly-accessible version control repository (e.g. GitHub, BitBucket) that supports git. (Note: Posting a repository in a different version control system will not be accepted)
- N. Pool Three Full Stack (comprised of design and development) Provide a URL to the working design and development prototype
- O. Submitted Attachment B Labor Category Mapping and Discount
- P. Submitted Attachment C Price Quote Sheet (Based off offsite rates)
- Q. Submitted Attachment E Approach Criteria Evidence

1.4 As part of the technical approach submission the quoters shall comply with the following for all pools:

- A. Ensure that the prototype consumes, modifies, remixes, or displays the dataset provided for its functionality (such as explanatory written content).
- B. Publish a repository consisting of all prototype source code, design assets, and *all associated documentation that went into the creation of the prototype*, to an online and publicly accessible version control system (e.g., GitHub, GitLab, BitBucket) that supports *git*. The uploaded repository shall be in *git*. Posting a repository in a different version control system will *not* be accepted. Quoters are allowed, and encouraged, to include any kind of documentation in the repository, including photographs, screenshots, or notes of their development and design process.
- C. The Quoter shall send the Government a URL representing the repository and if more than one branch is present, then the quoter must note the specific branch that should be evaluated. The timestamp of the most recent commit to the branch in the canonical repository to be evaluated will be the source that determines the Timeliness of Prototype Delivery.
- D. The quoter shall completely fill out Attachment E (spreadsheet), Approach Criteria Evidence, included in the RFQ for each pool (e.g., Pool One -Design) that it is quoting on, respectively thereby providing evidence that the pool-specific criteria have been completely met.
- E. Include a publicly-available URL to your prototype at the top of a README.md file located in the root directory of your repository.
- F. The prototype can be accessed via the publicly-available URL at the top of the README.md file without generating any HTTP 4xx or 5xx errors.
- G. Write a brief description, no greater than 750 words, of the approach used to create the prototype. Place this description in the README.md file located in the root directory of your repository.
- H. The following scenarios are conditions *that if met*, shall constitute a deficiency, and fully disqualify a quoter from receiving an award:
 - 1. If a commit is made to the branch subject to evaluation *after* the quoter has sent the repository URL to the Government that quoter will be immediately disqualified, and the Government will immediately stop their evaluation.
 - 2. If the code, or any design asset, of the prototype is changed on the server *after* the offeror has sent the repository URL to the Government that quoter will be immediately disqualified, and the Government will immediately stop their evaluation.
 - 3. If any defect, of any severity, is discovered in the code, or a design assets or in some aspect of the environment of the server hosting the prototype, after the

quoter has sent the repository URL to the Government, the quoter is expressly prohibited in making any change to either the repository or to the prototype. Any quoter making such a change will be immediately disqualified and the Government will stop their evaluation.

1.5 Questions: Any questions submitted concerning the RFQ must be received no later than Monday June 22, 2015, 4:00 pm Eastern Time (ET) as indicated in eBuy. Questions must be submitted via email to agilebpa@gsa.gov, no later than Monday June 22, 2015, 4:00 pm Eastern Time as indicated in eBuy. The Government expects to provide answers via eBuy to all contractors under Schedule 70 SIN 132-51, no later than Wednesday June 24, 2015, 12:00 noon, Eastern Time as indicated in eBuy.

2.0 BACKGROUND

18F is a newly formed organization within GSA. Our mission is to transform the way the government builds and buys Information Technology, with an emphasis on public-facing digital services. 18F is a fee-driven organization, largely operating under the authority of the Economy Act. Federal agencies approach 18F with a need or an opportunity, and 18F enters into an interagency agreement to provide one or more of the following lines of service:

- **Delivery** -- Design, build, and operate effective, user-centric digital services focused on the interaction between government and the people and businesses it serves.
- **Consulting** -- Provide hands-on consulting services to Federal program managers and other leaders who need assistance in designing and managing software acquisitions that use modern development techniques (e.g., agile, lean, open source).
- **Presidential Innovation Fellowship Program** -- Pair talented, diverse technologists, and innovators with top civil-servants and change-makers working at the highest levels of the Federal Government to tackle some of our nation's biggest challenges.

Five key principles guide all the work that 18F does:

1. Put the needs of users first
2. Release early, iteratively, and often
3. Don't slow down delivery
4. Only do it if it adds value
5. Work in the open

Since our inception in March 2014, 18F has quickly grown to over 100 designers, developers, and product specialists. The demand for 18F's services has far exceeded its capacity to supply. Help from the private sector to meet this demand is needed. In addition, based on the work that 18F Consulting has been doing, 18F has seen a real need for a government-wide contract vehicle

through which agencies can have access to a pool of vendors with agile delivery capabilities such as user-centered design, agile software development, and Development and Operations (DevOps).

3.0 OBJECTIVE

The primary goal of the ADS I BPA is to offer 18F and Federal agencies a method to procure digital services (e.g. the delivery of digital information data or content and transactional services) that meets socio-economic goals and regulatory compliance while improving processes through agile methodologies. Specifically the goals of 18F program are:

1. Establish a streamlined and common contracting vehicle that:
 - a. features vendors specializing in agile delivery services (e.g. all-encompassing term that describes vendors who specialize in user experience design and agile software development practices)-- user-centered design, agile architecture (e.g. a system or software architecture that is versatile, easy to evolve, to modify,), agile software development (e.g. group of software development methods in which requirements and solutions evolve through collaboration between self-organizing, cross-functional teams), and DevOps
 - b. can be leveraged by users throughout the Government
2. Consolidate Federal Government spending for this specific marketplace
3. Advance socio-economic goals of GSA and Federal agencies
4. Collect, analyze, and act on detailed transactional-level data to better support decisions related to contractor performance management

4.0 SCOPE

The fundamental scope of the ADS I BPAs is to provide a streamlined process to support 18F's need for agile delivery services, including user-centered design, agile architecture, agile software development, and DevOps. The ADS I BPAs will be available for use by General Services Administration 18F program office for internal purchases and assisted acquisitions to support other Federal agencies.

The labor categories that are within scope of these BPAs are the following:

Pool One - Design

Category 1 - Product Manager	Category 5 - Visual Designer
Category 3 - Interaction Designer / User Researcher / Usability Tester	Category 6 - Frontend Web Developer

Category 4 - Writer / Content Designer / Content Strategist	
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Pool Two - Development

Category 2 - Technical Architect	Category 7 - Backend Web Developer
Category 6 - Frontend Web Developer	Category 8 - DevOps Engineer

Pool Three - Full Stack

Category 1 - Product Manager	Category 8 - DevOps Engineer
Category 2 - Technical Architect	Category 9 - Security Engineer
Category 3 - Interaction Designer / User Researcher / Usability Tester	Category 10 - Delivery Manager
Category 4 - Writer / Content Designer / Content Strategist	Category 11 - Agile Coach
Category 5 - Visual Designer	Category 12 - Business Analyst
Category 6 - Frontend Web Developer	Category 13 - Digital Performance Analyst
Category 7 - Backend Web Developer	

The Government reserves the right during BPA administration as needs emerge to add additional Pools and labor categories to the ADS I BPAs to include for example new functional areas and labor categories that are within the general scope of agile delivery services. **See Attachment B for complete labor category descriptions.**

5.0 PERIOD OF PERFORMANCE AND CONTRACT TYPE

The period of performance for these BPAs is from XX-XX-XXXX (date of award) to XX-XX-XXXX, which covers a five-year period.

BPA pricing will be based on fixed unit price, fixed labor category rates.

6.0 PLACE OF PERFORMANCE

Performance instructions will be provided with each task order placed against these BPAs.

7.0 OBLIGATION OF FUNDS

These BPAs do not obligate any funds. Funds will be obligated by placement of individual task orders via purchase orders or government-wide purchase card. The Government is obligated only to the extent of orders placed under the established BPA by personnel authorized to do so.

8.0 VOLUME OF PURCHASES

The Government estimates, but does not guarantee, that the volume of purchases through these agreements will be \$25,000,000.00 over the life of these BPAs. This is not a ceiling amount and the accumulated value of task orders issued under these BPAs may exceed this amount without modification to the BPA.

9.0 AUTHORIZED PLACEMENT OF ORDERS

GSA Contracting Officers who are doing procurements in support of 18F and its Federal customers are authorized to place orders.

10.0 ORDER PLACEMENT

The solicitation and placement of orders under the BPAs is not guaranteed. All orders shall be placed via GSA Procurement eTools (e.g., eBuy, IT Solutions Shop (ITSS)) unless modified by the GSA BPA Contracting Officer.

Contractors shall submit a response on all task order request for quotes. If a vendor does not intend to submit a quote on a task order request for quotes, the vendor shall place a "No Bid" and shall include a brief explanation as to the reason for the "No Bid."

All orders against the BPAs must follow the ordering procedures of FAR 8.405-3(c)(2) and (3) and if limiting sources FAR 8.405-6.

For time-and-materials and labor-hours orders, Task Order Contracting Officers shall follow the procedures in FAR 8.404(h).

11.0 INSPECTION AND ACCEPTANCE

Inspection and acceptance shall be as specified under the GSA Schedule 70 contract and individual task orders.

12.0 INVOICES

The requirements of proper invoices for these BPAs are as specified in the GSA IT Schedule 70 contract. Invoices shall be submitted to the address specified on individual task orders placed under these BPAs. In the event of any inconsistency between the provisions of these BPAs and the contractor's invoice, the provisions of these BPAs shall take precedence.

Each invoice shall contain the task order number, Schedule 70 contract number, BPA number, unit price, quantity, total price, invoice number, and accounting control number. The Contractor will be paid by electronic funds transfer (EFT), unless otherwise specified in individual orders.

13.0 REPORTING

The Government will provide a standardized reporting template that the contractor shall utilize. Contractor shall furnish reports via email to the Contracting Officer or other authorized Government representative.

14. WARRANTY

The contractor shall be responsible for reworking any failed physical components at the contractor's expense. Additional warranty terms may be incorporated into individual task orders.

15.0 DATA RIGHTS AND OWNERSHIP OF DELIVERABLES

The specific terms and conditions governing data rights and ownership of deliverables shall be specified in each respective task order under this BPA. The remaining subparagraphs in this section 15.0 are provided as guidelines for ordering officials to consider incorporating, when possible and as appropriate, into the ordering official's task order under this BPA.

It is GSA's intent that any data or deliverable created as a result of a task order under this BPA be committed to the public domain.

Contracting Officers are encouraged to designate in task orders the following items as property of GSA with the intention of committing the items to the public domain: all data, documents, graphics and code created under this BPA including but not limited to, plans, reports, schedules, schemas, metadata, architecture designs, and the like; new open source software created by the Contractor and forks or branches of current open source software where the Contractor has made a modification; new tooling, scripting configuration management, infrastructure as code, or any other final changes or edits to successfully deploy or operate the software.

If commercial software is required as part of the contractor's delivery of professional services, then the ordering official shall include the appropriate FAR or applicable agency supplemental clause(s).

The contractor shall use open source technologies wherever possible, in support of the 18F Source Code Policy. All licenses must be expressly listed in the deliverable. Regardless of

license(s) used (e.g., MIT, GPL, Creative Commons 0) the license(s) shall be clearly listed in the documentation.

If the contractor needs to use work that does not have an open source license, the contractor is required to request permission from 18F, in writing, before utilizing that work in any way in connection with the task order. If approved, all licenses shall be clearly set forth in a conspicuous place when work is delivered to 18F.

If an open source license provides implementation guidance, the contractor shall ensure compliance with that guidance. If implementation guidance is not available, the contractor shall attach or include the license within the work itself. Examples of this include code comments at the beginning of a file or contained in a license file within a software repository.

Contracting Officers may consider requiring the contractor to place a copyright waiver on materials, documents, deliverables, etc., developed during the performance of a task order. See Attachment D boilerplate template.

16.0 PROGRAM REVIEW

The Contracting Officer or other authorized Government representative may hold semi-annual program review meetings. Such meetings will be held via telecom or video teleconferencing; however, the Government reserves the right to request a meeting in-person. The meetings will include all BPA holders, representatives from 18F and/or prospective customer agencies.

The BPAs shall be reviewed on an annual basis. Review of the BPAs will consist whether:

- A. The Schedule contract, upon which the BPA was established, is still in effect
- B. The BPA still represents the best value
- C. The BPA holder has been conforming to the performance requirements and responding to individual task orders

17.0 CONTRACTING TEAMING ARRANGEMENTS

Contractor Teaming Arrangements (CTAs) are only authorized on individual task orders and not for the establishment of these BPAs. Depending on the complexity of a particular requirement, the BPA holder has the option to form a CTA with another BPA holder that offers the remaining labor categories so that they may compete for an order as a team. This is a solution that benefits BPA holders and ordering activities alike, as it increases competition and allows for innovative, multi-vendor selections. BPA holders are encouraged using the flexibility offered by CTAs whenever necessary and appropriate.

When forming a CTA for this purpose, a BPA holder cannot team with a non-BPA holder (i.e., a Federal Supply Schedules Contractor not "awarded" under the BPA). A CTA forms a direct contractual relationship ("privity of contract") between each CTA vendor and the ordering agency, which means that each vendor must be eligible on its own to compete for task orders

under these BPAs. A BPA holder attempting to “team” with a non-BPA holder would amount to making the non-BPA holder a direct party to a BPA it was not selected to be a part of and/or did not compete for.

18.0 QUALITY ASSURANCE

Quality assurance requirements will be defined on an individual task order basis.

19.0 OFF-RAMPING

GSA reserves the unilateral right to off-ramp BPA holders if it is determined to be in the Government’s best interests. The BPA is not a contract. Either the GSA Contracting Officer or a BPA holder may cancel the BPA upon written notice to the other party. The placement of orders under the BPAs is not guaranteed.

The cancellation of a BPA shall have no effect on a preexisting order placed under the BPA; such an order to include remaining option periods in such an order remains valid so long as the contractor’s applicable GSA Schedule contract remains valid. A BPA holder’s obligations under an existing order are not impacted by the cancellation of a BPA. Examples of why the Government may elect to off-ramp a BPA holder include but are not limited to the following:

1. Contractors who fail to maintain BPA awarded labor categories on the Contractor’s GSA Schedule.
2. Debarment, Suspension, or Ineligibility as defined in FAR Subpart 9.4.
3. Contractors who fail to consistently provide a response to task order Request for Quotes.
4. Contractors who fail to complete task order objectives.

20.0 ON-RAMPING

The Government reserves the right to reopen this RFQ in order to establish additional BPAs if the GSA Contracting Officer determines it to be in the best interest of the Government to increase competition, support socio-economic goals, or to achieve other Government interests or requirements.

The reopening of the solicitation (onboarding) will be achieved via a solicitation amendment to all Schedule 70 holders through eBuy. It is the Government’s intent to evaluate quotes received in response to the reissued/reopened BPA RFQ in accordance with the same or substantially the same evaluation factors in this original BPA RFQ; those evaluation factors and other instructions if any shall be detailed in the reissued/reopened RFQ. On-ramped quoter’s quote must be rated equal to or higher than the lowest rated Contractor originally awarded a BPA within the Pool being applied for.

21.0 SECURITY CLEARANCES

The contractor may be required to obtain, or already possess, varying levels of security clearances in the performance of task orders issues under this BPA. All costs associated with obtaining/possessing such security clearances should be factored into the price offered under the contractors IT Schedule 70 contract.

22.0 CLAUSES AND PREVAILING TERMS AND CONDITIONS

All terms and conditions of the Contractor's awarded Federal Supply Schedule 70 contract shall apply to the BPA and orders issued against the BPA. The terms and conditions of the Contractor's Federal Supply Schedule 70 contract shall prevail over the BPA and all orders, except to the extent that lower prices in the established BPA shall take precedence over higher prices in the Contractor's Federal Supply Schedule 70 contract. The terms and conditions of this BPA shall apply to all purchases made pursuant to it. In the event of an inconsistency between the provisions of the BPA and any terms and conditions contained in an order, the provisions of this BPA will take precedence. Delivery terms shall be established on individual task orders.

23.1 FAR Clauses

This BPA incorporates one or more clauses by reference, with the same force and effect as if they were given in full text. Upon request, the Contracting Officer will make their full text available. Also, the full text of a clause may be accessed electronically at <https://acquisition.gov>

FAR 52.212-4 (c) Contract Terms and Conditions - Commercial Items May 2015

GSAM 533.103 Protests to the Agency

23.0 GOVERNMENT POINT OF CONTACT

Hassan Harris
Senior Contracting Officer
National IT Commodity Program
820 W. Peachtree Street Suite 820
Atlanta, GA 30308
Phone: (404) 215-8705
Email: hassan.harris@gsa.gov

24.0 EVALUATION AND BASIS FOR AWARD

This procurement is being conducted in accordance with FAR Subpart 8.4. This is not a FAR Part 15 Contracting by Negotiation acquisition. The evaluation criteria for the ADS I BPA will be based on Best Value Tradeoff.

For ADS I BPAs Pool One Design, Pool Two Development and Pool Three Full Stack, the best value basis for awards will be determined by a Compliance Review which is a pass/fail and two evaluation factors: Technical Approach and Price.

For ADS I BPAs Pool One Design, the best value basis for awards will be determined by two evaluation factors, Technical Approach and Price, with Technical Approach being significantly more important than Price. GSA intends to award approximately 5 BPAs for Pool One Design to the quoters whose price is reasonable and achieve the highest rating for Pool One Design in regards to Factor 1, Technical Approach rating. There are three ratings associated with Technical Approach rating – Exceptional, Acceptable and Non Acceptable. If the highest Technical Approach rating (i.e. Exceptional) does not result in approximately 5 awards, then additional awards will be made at the next Technical Approach rating of “Acceptable”. Factor 2, Price will be used as the deciding factor with companies that receive the same Technical Approach rating.

For ADS I BPAs Pool Two Development, the best value basis for awards will be determined by two evaluation factors, Technical Approach and Price, with Technical Approach being significantly more important than Price. GSA intends to award approximately 5 BPAs for Pool Two Development to the quoters whose price is reasonable and achieve the highest rating for Pool Two Development in regards to Factor 1, Technical Approach rating. There are three ratings associated with Technical Approach rating – Exceptional, Acceptable and Non Acceptable. If the highest Technical Approach rating (i.e. Exceptional) does not result in approximately 5 awards, then additional awards will be made at the next Technical Approach rating of “Acceptable”. Factor 2, Price will be used as the deciding factor with companies that receive the same Technical Approach rating.

For ADS I BPAs Pool Three Full Stack (Design and Development), the best value basis for awards will be determined by two evaluation factors, Technical Approach and Price, with Technical Approach being significantly more important than Price. GSA intends to award approximately 10 BPAs for Pool Three full stack to the quoters whose price is reasonable and achieve the highest rating for Pool Three Full Stack in regards to Factor 1, Technical Approach rating. There are three ratings associated with Technical Approach rating – Exceptional, Acceptable and Non Acceptable. If the highest Technical Approach rating (i.e. Exceptional)

does not result in approximately 10 awards, then additional awards will be made at the next Technical Approach rating of "Acceptable". Factor 2, Price will be used as the deciding factor with companies that receive the same Technical Approach rating.

The Government intends to evaluate quotes and issue multiple BPAs based on initial quotes. Quotes should contain the vendor's best terms in the initial quote. The Government may, at its discretion, confer with a Quoter to clarify quote details. The Government also reserves the right not to issue a BPA.

A. NON-PRICE FACTORS:

Factor 1: Technical Approach: Quoters are required to submit a working prototype for each Pool it's submitting a quote for Pool One Design, Pool Two Development, and/or Pool Three Full Stack which consists of both design and development, using the openFDA (<https://open.fda.gov>) dataset and Application Programming Interface (API) which demonstrates its agile delivery capabilities. The quoter's proposed mix of labor categories and level of effort for its working prototype, as reflected in Attachment C, shall be evaluated to assess the quoter's understanding and capability to supply Agile Delivery Services. The submission of the working prototype serves as a sample task that GSA believes is representative of the type of task orders that may be issued against the BPAs. Demonstration of their agile capabilities shall consist of the following:

For Pool One Design and Pool Two Development:

Description: Write a brief description, no greater than 750 words, of the approach used to create the working prototype and place this description in the README.md file located in the root directory of your repository.

Pool One Design: In addition to the Description, above, the Quoter must demonstrate that they followed the U.S. Digital Services Playbook by providing evidence in the repository. The README.md file should also make reference to the following for Pool One design:

- a. assigned one leader and gave that person authority and responsibility and held that person accountable for the quality of the prototype submitted
- b. assembled a multidisciplinary and collaborative team that includes at a minimum three of the labor categories limited to the Design Pool Labor categories to design the prototype as quoted in Attachment C. The quoter's proposed mix of labor categories and level of effort for its working prototype, as reflected in Attachment C, shall be evaluated to assess the quoter's understanding and capability to supply agile delivery services.
- c. understand what people need, by including people (see note #1) in the prototype design process
- d. used at least three "human-centered design" techniques or tools
- e. created or used a design style guide and/or a pattern library
- f. used at least three modern (see Note#2) and open source frontend or client side (see note #3) web technologies

- g. performed usability tests with people
- h. used an iterative approach, where feedback informed subsequent work or versions of the prototype
- i. created a prototype that works on multiple devices and presents a responsive design
- j. provided sufficient documentation to install and run their prototype on another machine
- k. prototype and underlying platforms used to create and run the prototype are openly licensed and free of charge.

Notes: (#1) The government understands it will be difficult to find people who would be credible actual users of the prototype, given the dataset. "People" here is to be understood as anyone not directly involved in the design or development of the prototype. Subsequent use of the word "People" in all the criteria should be understood to have the same definition as described in this footnote.

(#2) "Modern" is to be understood as any technology or standard released, created, initiated or finalized in the 5 years preceding the release of this RFQ. Any subsequent use of the word "Modern" in these criteria is to be understood as having the same definition as described in this note.

(#3) Either term, frontend or client-side is meant to be understood as a code that is executed within a user-agent, most commonly in this context a web browser.

Pool Two: Development Pool: In addition to the Description, above, the Quoter must demonstrate that they followed the U.S. Digital Services Playbook by providing evidence in the repository. The README.md file should also make reference to the following for Pool Two Development:

- a. assigned one leader, gave that person authority and responsibility and held that person accountable for the quality of the prototype submitted
- b. assembled a multidisciplinary and collaborative team that includes at a minimum two of the labor categories limited to the Development Pool labor categories to develop the prototype as quoted in Attachment C. The quoter's proposed mix of labor categories and level of effort for its working prototype, as reflected in Attachment C, shall be evaluated to assess the quoter's understanding and capability to supply agile delivery services
- c. used at least five modern and open-source technologies, regardless of architectural layer (frontend, backend etc)
- d. deployed the prototype on an Infrastructure as a Service (IaaS) or Platform as a Service (PaaS) provider, and indicated which provider was used
- e. wrote unit tests for their code
- f. set up or used a continuous integration system to automate the running of tests and continuously deployed their code to their IaaS or PaaS provider
- g. set up or used configuration management
- h. set up or used continuous monitoring
- i. deploy their software in a container (i.e., utilized operating-system-level virtualization)
- j. used an iterative approach, where feedback informed subsequent work or versions of the prototype

- k. provided sufficient documentation to install and run their prototype on another machine
- l. prototype and underlying platforms used to create and run the prototype are openly licensed and free of charge

Pool Three Full Stack:

Description: Write a brief description, no greater than 1500 words, of the approach used to create the working prototype and place this description in the README.md file located in the root directory of your repository.

Pool Three: the Full Stack Pool: In addition to the Description, above, the quoter must demonstrate that they followed the U.S. Digital Services Playbook by providing evidence in the repository. The README.md file should also make reference to the following for Pool Three Full Stack:

- a. assigned one leader and gave that person authority and responsibility and held that person accountable for the quality of the prototype submitted.
- b. assembled a multidisciplinary and collaborative team that includes at a minimum five of the labor categories limited to the Design Pool, Development Pool categories to the full stack (i.e., Design and Development) as quoted in Attachment C. The quoter's proposed mix of labor categories and level of effort for its working prototype, as reflected in Attachment C, shall be evaluated to assess the quoter's understanding and capability to supply agile delivery services.
- c. Understand what people need, by including people in the prototype development and design process
- d. Used at least three "human-centered design" techniques or tools
- e. Created or used a design style guide and/or a pattern library
- f. Performed usability tests with people
- g. used an iterative approach, where feedback informed subsequent work or versions of the prototype
- h. created a prototype that works on multiple devices, and presents a responsive design
- i. used at least five modern and open-source technologies, regardless of architectural layer (frontend, backend, etc)
- j. deployed the prototype on an Infrastructure as a Service (IaaS) or Platform as Service (PaaS) provider, and indicated which provider they used.
- k. wrote unit tests for their code
- l. setup or used a continuous integration system to automate the running of tests and continuously deployed their code to their IaaS or PaaS provider.
- m. setup or used configuration management
- n. setup or used continuous monitoring
- o. deploy their software in a container (i.e., utilized operating-system-level virtualization)
- p. provided sufficient documentation to install and run their prototype on another machine
- q. prototype and underlying platforms used to create and run the prototype are openly licensed and free of charge

B. PRICE:

Factor 2- Price is significantly less important than Technical Approach and will be used as a deciding factor with companies that receive the same Technical Approach rating as previously discussed in Section 24. In determining price reasonableness, the Government will verify that the discounted rates quoted by the offeror for all quoted categories in Attachment B are equal to or less than the offeror's Schedule 70 contract rates. The quoter's proposed rates, mix of labor categories and level of effort for its working prototype, as reflected in Attachment C shall enable the Government to assess the price of performance as between competing quotes. Quoters must submit a separate Attachment C for each pool it's submitting a quote for. Price evaluation for BPA best value selection purposes will be based on the offeror's total discounted price for the development of the working prototype as quoted in Attachment C. Attachment C should be completed as follows:

1. Column A: List labor categories from Attachment B used to create working prototype
2. Column B: Insert Proposed BPA Price Labor Rates from Attachment B, rates quoted in Attachment C must be equal to BPA rates quoted in Attachment B
3. Column C: Insert hours level of effort
4. Column D: Column will automatically calculate total price based on labor hours level of effort.

ATTACHMENT 2

Cyrus E. Phillips IV

[REDACTED]

[REDACTED]



From: hassan.harris@gsa.gov [mailto:hassan.harris@gsa.gov] On Behalf Of Agile BPA

Sent: Wednesday, September 02, 2015 4:37 PM

To: Naina Leo <Naina.Leo@octoconsulting.com>; Stacy Toth <Stacy.Toth@octoconsulting.com>

Subject: Brief Explanation of Award Decision Agile Delivery Services (ADS I) Blanket Purchase Agreement (BPA) Pool Three Full Stack - RFQ 4QTFHS150004

Good Afternoon Stacy Toth

This letter constitutes the brief explanation of the basis for the award decision in response to your request and in accordance with FAR Subpart 8.405-3. This acquisition was conducted in accordance with FAR Subpart 8.4; this was not a FAR Part 15 contract by negotiation acquisition. As provided for in the Request for Quote (RFQ) the evaluation criteria for the ADS I BPA was based on Best Value Tradeoff. For ADS I BPAs Pool Three Full Stack, the best value basis for awards was determined by a compliance review which was a pass/fail and two evaluation factors: Technical Approach and Price with Technical approach being significantly more important than Price consistent with the terms of the RFQ.

As provided for in the RFQ, there were three ratings associated with the Technical Approach factor: Exceptional, Acceptable, and Non Acceptable. The RFQ provided that if the highest Technical Approach rating (i.e. Exceptional) did not result in approximately 10 awards, then additional awards would be made at the next Technical Approach rating of "Acceptable" however this did not become necessary given the number of offerors that achieved the Exceptional rating. Factor 2, Price, was used as the deciding factor with offerors that received the same Technical Approach rating.

As stated in the RFQ GSA's intent was to award approximately 10 BPAs for Pool Three full stack to the quoters whose price was reasonable and achieved the highest rating for Pool Three full stack in regards to Factor 1, Technical Approach. The number of BPAs was an approximation and GSA reserved the right in its sole discretion to establish a fewer or greater number of BPAs.

1). Awards were made to the following offerors that received a Pass determination for Compliance Review and achieved an Exceptional rating for the Technical Approach factor and whose price was determined reasonable and had the lowest total price. See attachment A

2. Brief explanation regarding the quote from Octo Consulting Group (GS-35F-0243W). The evaluation process of the quote resulted in the following:

A. Compliance Review: Pass

B. Technical Approach rating: **Exceptional**

C. Attachment C Total Price: [REDACTED]

I would like to thank you for your company's participation in this acquisition and hope the information provided will assist you in future competitions.

If you submitted a quote for Pool 1 and/or Pool 2, then please be aware that those Pools are still in the preaward process and separate notifications will be issued for those Pools respectively at a future date to be determined.

Please be on the lookout for future on-ramping opportunities should the Government determine in the future to establish additional BPAs for Pool 3 in accordance with RFQ section 20.

I can be reached at agilebpa@gsa.gov. This letter constitutes the brief explanation of the basis for the award decision in accordance with FAR Subpart 8.405-3.

--
Hassan Harris
Senior Contracting Officer
GSA/Federal Acquisition Service
Email: agilebpa@gsa.gov

Vendor Name	BPA Number	Total Market Basket Price
Acumen Solutions, Inc	GS-26F-CA004	\$ 39,132.89
Inc. (AIS)	GS-26F-CA005	\$ 33,435.06
Booz Allen Hamilton Inc	GS-26F-CA006	\$ 49,616.18
DSoft Technology Company	GS-26F-CA007	\$ 24,692.95
Research Institute, Inc. (Esri)	GS-26F-CA008	\$ 31,026.17
Flexion Inc.	GS-26F-CA009	\$ 25,426.44
(CompuTech Inc)	GS-26F-CA010	\$ 23,761.02
Public Sector LLP.	GS-26F-CA011	\$ 30,249.95
SemanticBits	GS-26F-CA012	\$ 33,118.02
TechFlow, Inc.	GS-26F-CA013	\$ 31,530.21
TeraLogics, LLC	GS-26F-CA014	\$ 27,014.18
Three Wire Systems, LLC	GS-26F-CA015	\$ 27,832.29
TrueTandem, LLC	GS-26F-CA016	\$ 16,536.81
Solutions, Inc.	GS-26F-CA017	\$ 46,435.90
Ventera Corporation	GS-26F-CA018	\$ 36,451.41
World Wide Technology	GS-26F-CA019	\$ 24,742.81

ATTACHMENT 3

Cyrus E. Phillips IV**From:** Naina Leo**Sent:** Friday, September 04, 2015 6:03 PM**To:** Agile BPA; Stacy Toth**Cc:** hassan.harris@gsa.gov**Subject:** RE: Brief Explanation of Award Decision Agile Delivery Services (ADS I) Blanket Purchase Agreement (BPA) Pool Three Full Stack - RFQ 4QTFHS150004**Importance:** High

Mr. Harris,

Octo Consulting Group has reviewed the debrief information you provided on Wednesday, September 2, 2015 and also the submissions from the winning companies. It was clear that our product was considered exceptional, and we were statistically a tie with the 16th company, Booz Allen Hamilton (~\$2K difference).

We do have a few observations about the quality of the product we created and the ones that were awarded, but one point that really stood out that we wanted to bring to your attention is that a number of the winning companies were not compliant with the BPA requirements. GSA stated that there would be a pass / fail for compliance and so we would have expected that these companies failed the compliance check and therefore be deemed ineligible for award. We are including this analysis for your review. Of note are 3 companies (Acumen Solutions; Booz Allen Hamilton and PricewaterhouseCoopers) that exceeded the requirement of 1500 words for the read.me file, 1 company (PricewaterhouseCoopers) that provided 2 read-me files, and 1 company (Three Wire Systems) that did not comply with the Github submission.

Given that our bid was likely the next one to be awarded – based on us being compliant, exceptional and within a \$2K difference from the competitive pool, we request that GSA consider making Octo Consulting Group a Pool 3 award. We have already retained counsel and are prepared to proceed in the U.S. Court of Federal Claims.

Vendor Name	BPA Number	Total Price
Acumen Solutions, Inc	GS-26F-CA004	\$ 39,132.89
Booz Allen Hamilton Inc	GS-26F-CA006	\$ 49,616.18
DSoft Technology Company	GS-26F-CA007	\$ 24,692.95
PricewaterhouseCoopers Public Sector LLP.	GS-26F-CA011	\$ 30,249.95

READ.ME Word Count	
1,730	Over limit
1,502	Over limit; also to other files p verbiage to ge
Removed	??
1,247	2 READ.ME Fil

[illegible]

ATTACHMENT 4

Cyrus E. Phillips IV

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



From: hassan.harris@gsa.gov [<mailto:hassan.harris@gsa.gov>] **On Behalf Of** Agile BPA

Sent: Wednesday, September 02, 2015 4:37 PM

To: Naina Leo <Naina.Leo@octoconsulting.com>; Stacy Toth <Stacy.Toth@octoconsulting.com>

Subject: Brief Explanation of Award Decision Agile Delivery Services (ADS I) Blanket Purchase Agreement (BPA) Pool Three Full Stack - RFQ 4QTFHS150004

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As provided for in the RFQ, there were three ratings associated with the Technical Approach factor: Exceptional, Acceptable, and Non Acceptable. The RFQ provided that if the highest Technical Approach rating (i.e. Exceptional) did not result in approximately 10 awards, then additional awards would be made at the next Technical Approach rating of "Acceptable" however this did not become necessary given the number of offerors that achieved the Exceptional rating. Factor 2, Price, was used as the deciding factor with offerors that received the same Technical Approach rating.

As stated in the RFQ GSA's intent was to award approximately 10 BPAs for Pool Three full stack to the quoters whose price was reasonable and achieved the highest rating for Pool Three full stack in regards to Factor 1, Technical Approach. The number of BPAs was an approximation and GSA reserved the right in its sole discretion to establish a fewer or greater number of BPAs.

1). Awards were made to the following offerors that received a Pass determination for Compliance Review and achieved an Exceptional rating for the Technical Approach factor and whose price was determined reasonable and had the lowest total price. See attachment A

2. Brief explanation regarding the quote from Octo Consulting Group (GS-35F-0243W). The evaluation process of the quote resulted in the following:

A. Compliance Review: Pass

B. Technical Approach rating: Exceptional

C. Attachment C Total Price: [REDACTED]

I would like to thank you for your company's participation in this acquisition and hope the information provided will assist you in future competitions.

If you submitted a quote for Pool 1 and/or Pool 2, then please be aware that those Pools are still in the preaward process and separate notifications will be issued for those Pools respectively at a future date to be determined.

Please be on the lookout for future on-ramping opportunities should the Government determine in the future to establish additional BPAs for Pool 3 in accordance with RFQ section 20.

I can be reached at agilebpa@gsa.gov. This letter constitutes the brief explanation of the basis for the award decision in accordance with FAR Subpart 8.405-3.

--
Hassan Harris
Senior Contracting Officer
GSA/Federal Acquisition Service
Email: agilebpa@gsa.gov

ATTACHMENT 5

18F Analysis

Octo review 15 of the 18F BPA winners for compliance (1 winning vendor, DSoft, has removed their documentation from GitHub). Octo reviewed the following criteria that were documented in the BPA:

1. README file, max length 1500 words, with a link to the production application
2. assigned one leader, gave that person authority and responsibility, and held that person accountable for the quality of the prototype submitted
3. assembled a multidisciplinary and collaborative team including a minimum of 5 labor categories from the Development Pool labor categories to design and develop the prototype
4. used an iterative approach, where feedback informed subsequent work or versions of the prototype
5. understand what people need, by including people in the prototype development and design process
6. used at least three "human-centered design" techniques or tools
7. created or used a design style guide and/or a pattern library
8. performed usability tests with people
9. created a prototype that works on multiple devices, and presents a responsive design
10. used at least five modern and open-source technologies, regardless of architectural layer (frontend, backend, etc.)
11. deployed the prototype on an Infrastructure as a Service (IaaS) or Platform as a Service (PaaS) provider, and indicated which provider they used
12. wrote unit tests for their code
13. set up or used a continuous integration system to automate the running of tests and continuously deployed their code to their IaaS or PaaS provider
14. set up or used configuration management
15. set up or used continuous monitoring
16. deploy their software in a container (i.e., utilized operating-system-level virtualization)
17. provided sufficient documentation to install and run their prototype on another machine
18. prototype and underlying platforms used to create and run the prototype are openly licensed and free of charge

Octo analyzed each vendor's submission for each criteria above. There were 3 companies that had many issues and lacked compliance to the 18 evaluation criteria above (however, we were unable to review DSoft's submission because they had removed it, which was in conflict with the RFQ instructions to leave code available publicly until 30-Sept):

- Acumen
- NCI
- TrueTandem

Acumen

- README file was 1730 words
- Named 3 people responsible for prototype (not 1)
- Mentioned that they used Scrum, but included NO documentation of iterative delivery
- No reference of deploying software in a container (OS virtualization)

NCI

- NCI never specifically say a single resource had full authority and accountability for the solution. README file states a PO was identified, but doesn't discuss authority of the PO or actually name the single resource accountable for the project
- NCI claims they assembled a cross functional team, but there is no documentation of roles and associated LCAT. Required details may be included in pricing
- No documentation of including people in the prototype development and design process
- No documentation of using at least three "human-centered design" techniques or tools
- No documentation of creating or using a design style guide and/or a pattern library
- No documentation of performing usability tests with people

TrueTandem

- Unable to determine if TrueTandem included people in the prototype development and design process (included in attachment E)
- Unable to determine if TrueTandem used at least three "human-centered design" techniques or tools (included in attachment E)
- Unable to determine if TrueTandem created or used a design style guide and/or a pattern library (included in attachment E)
- Unable to determine if TrueTandem performed usability tests with people (included in attachment E)
- Unable to find any reference to TrueTandem using continuous monitoring
- deploy their software in a container (i.e., utilized operating-system-level virtualization)

FORM 2
COVER SHEET

In The United States Court of Federal Claims

Cover Sheet

Plaintiff(s) or Petitioner(s)

Octo Consulting Group, Incorporated, 1600 International Drive, Suite 500, McLean, Virginia 22102

If this is a multi-plaintiff case, pursuant to RCFC 20(a), please attach an alphabetized, numbered list of all plaintiffs.

Name of the attorney of record (See RCFC 83.1(c)): Cyrus E. Phillips IV

Firm Name: Albo & Oblon, L.L.P.

Contact information for pro se plaintiff/petitioner or attorney of record:

Post Office Box: _____

Street Address: 2200 Clarendon Boulevard, Suite 1201

City-State-ZIP: Arlington, Virginia 22201-3331

Telephone: (804) 776-0660

E-mail Address: lawyer@procurement-lawyer.com

Is the attorney of record admitted to the Court of Federal Claims Bar? ☒ Yes ☐ No

Does the attorney of record have a Court of Federal Claims ECF account? ☒ Yes ☐ No

If not admitted to the court or enrolled in the court's ECF system, please call (202) 357-6402 for admission papers and/or enrollment instructions.

Nature of Suit Code:

1 4 0

Select only one (three digit) nature-of-suit code from the attached sheet.

If number 213 is used, please identify partnership or partnership group. If numbers 118, 134, 226, 312, 356, or 528 are used, please explain.

Agency Identification Code:

G S A

See attached sheet for three-digit codes.

Amount Claimed:

\$ _____

Use estimate if specific amount is not pleaded.

Disclosure Statement:

Is a RCFC 7.1 Disclosure Statement required? ☒ Yes ☐ No

If yes, please note that two copies are necessary.

Bid Protest:

Indicate approximate dollar amount of procurement at issue: \$ 24,000,000

Is plaintiff a small business? ☒ Yes ☐ No

Vaccine Case:

Date of Vaccination: _____

Related Cases:

Is this case directly related to any pending or previous case? ☐ Yes ☒ No

If yes, you are required to file a separate notice of directly related case(s). See RCFC 40.2.